

Judge Vaidik, cont.

1997 Indiana Judges Association Special Merit Award.

Judge Vaidik was appointed to the Court of Appeals in February 2000 by Governor Frank O'Bannon and was retained by election in 2002.

Because Judge Vaidik sees the Court of Appeals at the intersection of theoretical and practical law, she believes the Court should embody the highest degree of fairness and impartiality. This view informs her passion for teaching, as she feels that Hoosiers, and all litigants, deserve the finest possible legal advocates on their behalf. Judge Vaidik also believes that legal writing must be distinguished by logical construction and clear, explanatory prose.

She is an adjunct professor at the Indiana University Maurer School of Law and won its 2011 Adjunct Professor of the Year Award. She has served as a visiting professor at the College of Law of England and Wales and taught as an adjunct professor at Valparaiso University Law School.

She has taught at many law schools and for a number of organizations including the Indiana State Bar Association, the Indiana Legal Education Forum, and the Indiana Judicial Center.

Judge Vaidik has trained lawyers involved in prosecuting Rwandan war crimes, Mexican lawyers prosecuting drug lords, and solicitor advocates seeking the rights of audience in the High Courts in Belfast, Northern Ireland.

She is particularly proud of her long association with the National Institute of Trial Advocacy, which honored her with its 2007 Robert Keeton Faculty Award.

Despite her Court of Appeals caseload and her teaching, Judge Vaidik is also actively involved in a wide variety of community, legal, and judicial organizations. She served on the State of Indiana Children's Peak Performance Commission and has held many posts with the Indiana Judges Association and Indiana Judicial Center. She has been chairperson of the Judicial Education and

Community Relations Committees of the Indiana Judicial Center and is a member of the American Bar Association, Indiana State Bar Association, and Sagamore Inns of Court.

She has received many other awards and honors including the 2004 Indiana State Bar Association's Women in Law Achievement Award, the 2007 *Indiana Lawyer* Distinguished Barrister Award, the 2003 Paragon of Justice Award from Valparaiso University Law School, and the Sagamore of the Wabash Award from two Indiana governors.

Judge Vaidik and her husband are the proud parents of twin daughters, one a medical doctor and one a lawyer, and they have one grandson, who can choose either profession.

Judge Baker, cont.

Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Court of Appeals tidbits

■ Six of the court's first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.

■ Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.

■ Judge John C. McNutt's son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.

■ One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War and wrote "The Common Sense Lawyer."

■ Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.

■ Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become the U.S. ambassador to Chile.

COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE ISBA LEADERSHIP DEVELOPMENT ACADEMY

Griesemer v. State

CRIMINAL LAW ISSUE:

Whether Appellant was entrapped by police to commit the Class A misdemeanor of patronizing a prostitute.

ORAL ARGUMENT:

Tuesday, Feb. 11, 2014
10:30 a.m.

APPEAL FROM:

Marion Superior Court
The Honorable
Linda E. Brown, Judge

Attorneys for the Parties

For the Appellant

Daniel Moore was born in Norfolk, VA but moved to Indianapolis at the age of two where he has since lived. Mr. Moore attended Ball State University earning an Undergraduate Fellowship in 1986-87 and graduating with a BS in Psychology. In 1990, Mr. Moore graduated from Valparaiso University School of Law and began his career as a criminal defense lawyer.

As the son of a police officer and with a number of family members involved in law enforcement, Mr. Moore's practice choice was initially met with only modest enthusiasm, but as his practice grew, he was able to draw on those familiar resources and experiences to shape his practice.

Mr. Moore has tried over 250 bench and jury trials and as Special Judge and Judge *pro tempore* has presided over the full range of criminal cases from capital offenses to misdemeanors.

Mr. Moore is admitted to practice in all of Indiana's State and Federal Courts and commonly travels throughout Indiana representing individuals involved in gun-related cases on the recommendation of the NRA.

As an avid outdoorsman, Mr. Moore spends much of his free time on his family farm in Orange County, IN with his wife and their six children.

For the Appellee

Larry D. Allen began working in the Office of the Indiana Attorney General in early 2012 as a law clerk and is currently a Deputy Attorney General in Criminal Appeals.

Mr. Allen graduated from Olivet Nazarene University in 2004 with a major in political science. Before going to law school, he worked in the non-profit sector in the areas of international human rights and media. Mr. Allen earned his law degree from Indiana University McKinney School of Law in 2012. While in law school, he participated in the Staton Moot Court Competition, the Global Crisis Leadership Forum, and earned the Norman Lefstein Award of Excellence for his pro bono work with Indiana Legal Services' Senior Law Project.

Mr. Allen is from Bloomington where he currently lives with his wife, Jennifer.

Synopsis: Case No. 49A04-1308-CR-382

On Aug. 15, 2012, IMPD Detective Tabatha McLemore was posing as a prostitute on East Washington Street in Indianapolis. Around 2:30 in the afternoon, Griesemer drove past where she was standing, and he stared at her as he passed. A few minutes later, Griesemer drove northbound toward Washington Street on Ewing Street.

As he approached the corner of Ewing and Washington Streets, he asked Detective McLemore, through his open car window, if she needed a ride. She declined the ride, saying she was trying to make money, and he nodded his head toward his passenger seat, which she understood to be an invitation to enter the car.

She asked how much money he had, and he said \$20. She told him

she could perform fellatio for \$20. He nodded his head "yes," and then he nodded toward the passenger seat to indicate she should get in the car. She asked him to pick her up down the street; he nodded in agreement, drove down the street, and pulled into a parking lot.

At that point, uniformed officers arrested him.

A person commits Class A Misdemeanor patronizing a prostitute if that person "knowingly or intentionally pays, or offers or agrees to pay money or other property to another person . . . on the understanding that the other person will engage in . . . deviate sexual conduct with the person . . ." **Ind. Code § 35-45-4-3.**

On appeal, Griesemer does not contest that his actions could have permitted a reasonable trier of fact to

infer that he agreed to pay Detective McLemore to engage in deviate sexual conduct. Rather, he asserts he was entrapped.

The defense of entrapment is defined by **Ind. Code § 35-41-3-9:**

(a) It is a defense that:
(1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and
(2) the person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

If a defendant asserts the defense of entrapment and establishes police

- continued on p. 2

Case synopsis, cont.

inducement, then burden of proof shifts to the State to establish the defendant’s predisposition to commit the crime. *Dockery v. State*, 644 N.E.2d 573, 577 (Ind. 1994). Several factors may be relevant to determining whether a defendant was predisposed to commit a crime:

(1) the character or reputation of the defendant; (2) whether the suggestion of criminal activity was originally made by the government; (3) whether the defendant was engaged in criminal activity for a profit; (4) whether the defendant evidenced reluctance to commit the offense, overcome by government persuasion; and (5) the nature of the inducement or persuasion offered by the government. *Kats v. State*, 559 N.E.2d 348, 353 (Ind. Ct. App. 1990).

Griesemer asserts the evidence demonstrated he was induced by the police to commit the crime and the State did not demonstrate he was predisposed to commit the crime, so entrapment was established as a matter of law.

The State concedes “the police were involved in the crime,” but argues Detective McLemore “did nothing to persuade, cajole, intimidate, or otherwise improperly persuade [Griesemer] into agreeing to the transaction.” Rather, the State alleges, the evidence demonstrates Griesemer “was predisposed” and the police simply gave him the opportunity to commit the crime.

Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary’s indispensable role in Indiana government.

Since its 2000-2001 centennial, the court has held more than 370 “traveling oral arguments” at high schools, colleges, law schools and other venues.

This will be the court’s third *Appeals on Wheels* event this year, and the third such event before the Leadership Development Academy.

Indiana 1891: Every docket tells a story

Indiana Appellate Court Reports, Vols. 1, 2, and 3, include the complete written opinions of several hundred cases decided by the court in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

Agriculture was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

Railroads were frequent litigants. Vols. 1, 2, and 3 record 34 railroad-related appeals, many involving damages to livestock. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

Vol. 1 also includes two cases involving The Western Union Telegraph Co. One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic relations** occupied a significant

share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

Marshall et al v. Bell involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

Contract disputes comprised a large part of the docket, too, and some describe prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade in December 2013.)

Orme v. Cooper, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

Vols. 1, 2, and 3 include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges

The Honorable
John G. Baker
(Monroe County)

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic

- continued on p. 4

The Honorable
Nancy H. Vaidik
(Porter County)

Nancy H. Vaidik is a judge and a teacher with broad experience in both trial and appellate courts and in legal classrooms. She has an expertise in trial advocacy and appellate advocacy, with a strong background in the rules of evidence and legal mediation.

Judge Vaidik was selected by her colleagues as chief judge of the Court of Appeals for a three-year term beginning Jan. 1, 2014.

Judge Vaidik grew up in Portage, Indiana, and is a sixth-generation Hoosier who retains strong ties to her home town. She graduated with high distinction from Valparaiso University in 1977, with a double major in political science and psychology, and then studied at Valparaiso University Law School, where she earned her Juris Doctor in 1980.

Her early years as deputy and then chief deputy Porter County prosecutor provided the grounding for her judicial career. As an attorney, she tried over seventy-five jury trials and founded the Porter County Victims Assistance Unit, the Porter County Sexual Assault Recovery Project, the Domestic Violence Service, and the Valparaiso University Law School Mediation Clinic. She also served on the Porter County Community Corrections Board and led a countywide task force that spearheaded the eventual construction of a new county jail. After serving as a prosecutor, she went into private practice and specialized in domestic relations, probate, municipal law, and general litigation. She represented Caring Place, Inc., a shelter for battered women in Valparaiso.

From 1992 to 2000, she served as the judge of the Porter Superior Court. During her tenure on the trial court, Judge Vaidik was awarded a wide range of honors including the 1996 Indiana Domestic Violence Coalition Judge of the Year and the

- continued on p. 4

The Honorable
Melissa S. May
(Vanderburgh County)

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.